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Exempt from fees
GC 6103

7 Attorneys for United States
of America
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11
12 CHURCH OF SCIENTOLOGY OF)
CALIFORNIA,)
13)
Plaintiff,)
14)
vs.)
15)
GERALD ARMSTRONG,)
16)
Defendant.)
17 _____)
18 MARY SUE HUBBARD,)
19)
Intervenor.)
20 _____)
21

Case No. C 420153

NOTICE OF MOTION AND MOTION OF
THIRD PARTY UNITED STATES OF
AMERICA TO EXAMINE AND COPY
EXHIBITS 5-K, 5-L, 5-O, 5-P
AND 6-O

Date: July 26, 1991
Time: 8:30 A.M.
Dept: 56

Motion Cutoff: None Applicable
Discovery Cutoff: None Ap-
plicable
Trial Date: None Applicable

22 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

23 PLEASE TAKE NOTICE THAT ON July 26, 1991, at 8:30 AM or as
24 soon thereafter as counsel may be heard in Dept. 56 of the above
25 entitled Court, the United States of America will move this Court for
26 an order allowing the United States of America to examine and copy
27 Exhibits 5-K, 5-L, 5-O, 5-P and 6-O. This motion will be based upon
28 this Notice of Motion, the points and authorities, declarations and

1 exhibits submitted herewith, the complete files of this action,
2 and such oral argument as may be allowed by the Court.

3 ALSO PLEASE TAKE NOTICE that this matter will come on for
4 hearing before the Honorable Bruce R. Geernaert, Superior Court
5 Judge, in Department No. 56, Superior Court, 111 North Hill Street,
6 Los Angeles, California, at 8:30 AM on Friday, July 26, 1991.

7
8
9 Respectfully submitted,

10 LOURDES G. BAIRD
11 United States Attorney
12 MASON C. LEWIS
13 Assistant United States Attorney
14 Chief, Tax Division

15 DATED: June 20, 1991

16 
17 EDWARD M. ROBBINS, JR.
18 Assistant United States Attorney

19 Attorneys for the United States
20 of America

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26 Case No. C 420153

27 NOTICE OF MOTION AND MOTION
28 OF THIRD PARTY UNITED STATES OF
AMERICA TO EXAMINE AND COPY
EXHIBITS 5-K, 5-L, 5-O, 5-P AND 6-O

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 On April 30, 1985, in the case of United States v. Zolin, Case
3 No. CV 85-0440-HLH(Tx) (C.D. Cal.) the Honorable Harry L. Hupp,
4 United States District Judge, ordered the Clerk of the Superior Court
5 to deliver to the government copies of Exhibits 5-K, 5-L, 5-O, 5-P
6 and 6-O under seal in the case of Gerald Armstrong v. Church of
7 Scientology, Case No. C420153 (Los Angeles Superior Court).

8 Judge Hupp's 4/30/85 ORDER (Exhibit A to the Robbins Declara-
9 tion, infra) was the subject of numerous appeals concerning the MCCS
10 tapes (Exhibit 5-C). See United States v. Zolin, 809 F.2d 1411 (9th
11 Cir. 1987), op. withdrawn, reh gr, en banc (9th Cir. 1987), 832 F.2d
12 127, reh dismd, en banc, 842 F.2d 1135 (9th Cir. 1988), am'd 850
13 F.2d 610 (9th Cir. 1988), cert. gr. 488 U.S. 907, 109 S.Ct. 257, 102
14 L.Ed.2d 246, motion den. 489 U.S. 1005, 109 S.Ct 1110, 103 L.Ed. 174
15 (1989), aff'd in part and vacated in part, 491 U.S. 994, 109 S.Ct.
16 2619, 105 L.Ed.2d 469 (1989), on remand, 905 F.2d 1344 (9th Cir.
17 1990), reh. den. en banc (unpublished order September 19, 1990);
18 cert. denied, Church of Scientology v. United States, ____ U.S. ____,
19 59 U.S.L.W. 3636 (March 18, 1991). However, Judge Hupp's 4/30/85
20 ORDER (Exhibit A) regarding Exhibits 5-K, 5-L, 5-O, 5-P and 6-O was
21 never appealed. Apparently, in the furor over the MCCS tapes, the
22 government simply neglected to ask the Clerk of the Superior Court
23 for a copy of these Exhibits in 1985.

24 In January of this year the government obtained from the Clerk
25 of the Superior Court copies of the MCCS tapes (Exhibit 5-C) pursuant
26 to an Order of Judge Hupp in United States v. Zolin. (See Judge
27 Hupp's Order of 1/17/91, attached to the Robbins declaration as
28 Exhibit B). After reviewing the government files in United States

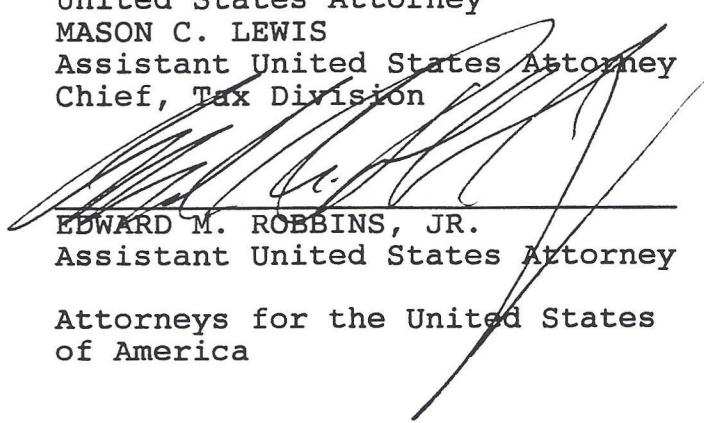
1 v. Zolin, government counsel discovered that the government had never
2 obtained copies of Exhibits 5-K, 5-L, 5-O, 5-P and 6-O from the Clerk
3 of the Superior Court, even though that aspect of Judge Hupp's
4 4/30/85 order was never appealed.

5 The government respectfully requests this Court to enter an
6 order allowing the United States of America to examine and copy
7 Exhibits 5-K, 5-L, 5-O, 5-P and 6-O. A proposed form of order is
8 submitted herewith.

9 Respectfully submitted,

10 LOURDES G. BAIRD
11 United States Attorney
12 MASON C. LEWIS
13 Assistant United States Attorney
14 Chief, Tax Division

15 DATED: June 19, 1991

16 
17 EDWARD M. ROBBINS, JR.
18 Assistant United States Attorney

19 Attorneys for the United States
20 of America

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24
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26 Notice of Motion and Motion of
27 Third Party United States of America
28 to Examine and Copy Exhibits 5-K, 5-L,
5-O, 5-P, and 6-O Case No. C 420153

1 DECLARATION OF EDWARD M. ROBBINS, JR.

2
3 I, Edward M. Robbins, Jr., pursuant to 28 U.S.C. § 1746,
4 declare and state as follows:

5 1. I am a member of the bar of this court, a duly-appointed
6 Assistant United States Attorney for the Central District of
7 California, an officer of this court, with my office located at 2315
8 Federal Building, 300 North Los Angeles Street, Los Angeles,
9 California 90020, and am an attorney appearing of record for the
10 United States of America in the case of United States v. Zolin, Case
11 No. CV 85-0440-HLH(Tx) (C.D. Cal.).

12 2. Attached hereto as Exhibit A, is a copy of Judge Hupp's
13 4/30/85 ORDER in United States v. Zolin requiring, among other
14 things, that the Clerk of the Superior Court deliver to the govern-
15 ment copies of Exhibits 5-K, 5-L, 5-O, 5-P and 6-O in the case of
16 Gerald Armstrong v. Church of Scientology, Case No. C420153 (Los
17 Angeles Superior Court).

18 3. Judge Hupp's 4/30/85 ORDER (Exhibit A) was the subject of
19 numerous appeals concerning the MCCS tapes (Exhibit 5-C). See United
20 States v. Zolin, 809 F.2d 1411 (9th Cir. 1987), op. withdrawn, reh
21 gr, en banc (9th Cir. 1987), 832 F.2d 127, reh dismd, en banc, 842
22 F.2d 1135 (9th Cir. 1988), am'd 850 F.2d 610 (9th Cir. 1988), cert.
23 gr. 488 U.S. 907, 109 S.Ct. 257, 102 L.Ed.2d 246, motion den. 489
24 U.S. 1005, 109 S.Ct 1110, 103 L.Ed. 174 (1989), aff'd in part and
25 vacated in part, 491 U.S. 994, 109 S.Ct. 2619, 105 L.Ed.2d 469
26 (1989), on remand, 905 F.2d 1344 (9th Cir. 1990), reh. den. en banc
27 (unpublished order September 19, 1990); cert. denied, Church of
28 Scientology v. United States, ____ U.S. ____, 59 U.S.L.W. 3636

1 (March 18, 1991). However, Judge Hupp's 4/30/85 ORDER (Exhibit A)
2 regarding Exhibits 5-K, 5-L, 5-O, 5-P and 6-O was never appealed.
3 Apparently, in the furor over the MCCS tapes, the government simply
4 neglected to ask the Clerk of the Superior Court for a copy of these
5 Exhibits in 1985.

6 4. In January of this year I obtained from the Clerk of the
7 Superior Court the MCCS tapes (Exhibit 5-C) pursuant to an Order of
8 Judge Hupp in United States v. Zolin. (See Judge Hupp's Order of
9 1/17/91, attached hereto as Exhibit B). After reviewing my file in
10 United States v. Zolin, I discovered that the government had never
11 obtained copies of Exhibits 5-K, 5-L, 5-O, 5-P and 6-O from the Clerk
12 of the Superior Court, even though that aspect of Judge Hupp's
13 4/30/85 order was never appealed.

14
15 I declare under penalty of perjury that the foregoing is true
16 and correct.

17
18 DATED: June 19, 1991


19 _____
20 EDWARD M. ROBBINS, JR.
21 Assistant United States Attorney
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RECEIVED

MAY 02 1985

Asst'd.....

FILED
 APR 30 1985
 CLERK, U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 BY *Zm* DEPUTY

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
 Petitioner,
 vs.
 FRANK S. ZOLIN, CLERK
 OF THE SUPERIOR COURT,
 Respondent.
 CHURCH OF SCIENTOLOGY
 OF CALIFORNIA,
 Intervenor.

NO. CV 85-0440-HLH
 ORDER

The Court makes the following Orders and Findings:

1. Reconsideration is denied as to Exhibits 5G and 5I; Order of March 12, 1985 will stand.
2. Intervenor Church has failed to raise any doubt of good faith of the Internal Revenue Service in pursuing this enforcement proceeding. Specifically, it is found that a bona criminal tax investigation of T. Ron Hubbard is being conducted the IRS for the years 1979-83, that the matter has not been

EXHIBIT A

02

1 referred to the Department of Justice for prosecution, that the
2 summons was validly issued pursuant to that investigation, that
3 the agent issuing the summons was in good faith in doing so, and
4 did not do so for an improper purpose, or to harass the taxpayer
5 or for a collateral purpose. No further discovery on this issue
6 is warranted.

7 3. With the exception of Exhibits 6B and 5C (the "MCCS
8 tapes"), the Court finds that all potentially applicable privileges
9 (attorney-client, marital) have been waived by voluntary
10 delivery of the material to Gerald Armstrong. In addition, no
11 privilege has been validly asserted by the holder of a potential
12 privilege as to certain items (Exhibits 5L and 5P).

13 4. Sufficient relevancy being shown, the IRS is entitled
14 to inspect and copy Exhibits 5K, 5L, 5O, 5P and 6O, and the
15 summons is to be enforced as to those items.

16 5. No relevancy or waiver has been shown for Exhibit 6
17 and it need not be produced.

18 6. As to Exhibit 5C (the "MCCS tapes"), the Court finds

19 (a) The tapes consist of confidential communications
20 between attorneys and clients or clients' authorized agents.

21 (b) The confidential communications were between
22 clients and their attorneys who had a common interest; the privilege
23 was, therefore, not destroyed by publication of the communication
24 to an outsider.

25 (c) There was no waiver of the privilege by delivery
26 to an outsider, the Court finding that the tapes were delivered
27 to Gerald Armstrong by mistake, and, in addition, that Petitioner
28 not carried the burden of showing waiver.

1 (d) The "fraud-crime" exception to the attorney-
2 client privilege does not apply. The quoted excerpts tend to
3 show or admit past fraud but there is no clear indication that
4 future fraud or crime is being planned.

5 (e) The Order sealing the Petersell affidavit (filed
6 March 15, 1985) quoting excerpts from the tapes will remain sealed.

7 (f) This Court's copy of the tapes will remain sealed
8 in possession of the Court's Clerk until after any appellate
9 review of this Order, after which it is to be returned to the
10 Superior Court. The Clerk of the Superior Court need not produce
11 its copy of the tapes pursuant to the summons.

12 7. The documents delivered hereunder shall not be deli-
13 vered to any other government agency by the IRS unless criminal
14 tax prosecution is sought or an Order of Court is obtained.

15 Petitioner is to prepare an Order in accord with this
16 Order and the Order of March 12, 1985. This Order is stayed for
17 sixty (60) days, and thereafter if an appeal or application for
18 a writ is filed and until decision on appeal or writ application
19 is rendered.

20 IT IS SO ORDERED.

21 DATED: April 30, 1985.

22 
23 HARRY L. HUPP
United States District Judge

24 A copy of this Order mailed to:
25 Charles H. Magnuson, Asst. U.S. Attorney
26 Donald C. Randolph, Esq.
Gordon Trask, County Counsel

27 EXHIBIT A
28

027

1 LOURDES G. BAIRD
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2 MASON C. LEWIS
Assistant United States Attorney
3 Chief, Tax Division
EDWARD M. ROBBINS, JR.
4 Assistant United States Attorney
Room 2315, Federal Building
5 300 North Los Angeles Street
Los Angeles, California 90012
6 Telephone: (213) 894-2729

7 Attorneys for United States of America

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)
12)
Petitioner,)
13)
v.)
14 RAUL ACOSTA, ACTING COUNTY)
CLERK, LOS ANGELES COUNTY,)
15)
Respondent.)
16)
_____)
17 CHURCH OF SCIENTOLOGY OF)
CALIFORNIA,)
18)
Intervenor.)
19)

No. CV 85-0440-HLH(Tx)
ORDER ON REMAND

FILED
JAN 17 1991

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

20 The mandate of the Ninth Circuit Court of Appeals reversing and
21 remanding is hereby filed and spread upon the minutes of this United
22 States District Court.

23 The opinion of the Ninth Circuit Court of Appeals directs the
24 court to receive into evidence the MCCS tapes. However, there is no
25 point in receiving them "into evidence" since the Court of Appeals
26 has made the only relevant finding of fact--that is, that the tapes
27 demonstrate that the tapes come under the crime-fraud exception to
28 the attorney-client privilege rule, and should, therefore, be subject

COPY

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
JAN 23 1991

EXHIBIT 8

1 to the IRS summons. The tapes are in the possession of the clerk of
2 this court. They are ordered delivered to counsel for the Internal
3 Revenue Service.

4 It is further ordered that the respondent shall produce the
5 original MCCS tapes under seal in the case of Gerald Armstrong v.
6 Church of Scientology, Case No. C420153 (Los Angeles Superior Court)
7 to Assistant United States Attorney Edward M. Robbins, Jr. for
8 inspection and copying. *followed by the return to the Superior Court* The MCCS tapes are identified as Exhibit 5C
9 (500 series) in the Armstrong action.

10 This is a final disposition of this matter.

11 IT IS SO ORDERED

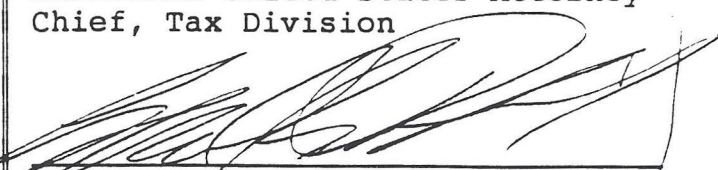
12 1-17-91

HARRY L. HUPP

13
14 HARRY L. HUPP
United States District Court Judge

15
16 Presented by

17 LOURDES G. BAIRD
United States Attorney
18 MASON C. LEWIS
Assistant United States Attorney
19 Chief, Tax Division

20
21 
22 EDWARD M. ROBBINS, JR.
Assistant United States Attorney
23 Attorneys for United States of America

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EXHIBIT B

CERTIFICATE OF SERVICE

1 I, Lydia Silva, declare:

2 That I am a citizen of the United States and resident or
3 employed in Los Angeles County, California; that my business
4 address is United States Attorney, Tax Division, 300 North Los
5 Angeles Street, Los Angeles, California 90012; that I am over
6 the age of eighteen years, and am not a party to the above-
7 entitled action; that I employed by the United States Attorney
8 for United States District Court for the Central District of
9 California, at whose direction the service by mail described in
10 this certificate was made; that on Jan. 15, 1991, I deposited
11 in the United States Mail at 300 North Los Angeles Street, Los
12 Angeles, California, in the above-entitled action, in an
13 envelope bearing the requisite postage, a copy of ORDER ON REMAND
14

15 addressed to: (see attached list)

16
17
18
19 at their last-known address, at which place there is a
20 delivery service by United States Mail.

21 This certificate is executed on Jan. 15, 1991,
22 at Los Angeles, California.

23 I certify, under penalty of perjury, that the foregoing is
24 true and correct.

25
26 
Lydia Silva

27
28 EXHIBIT B

SERVICE BY MAIL

1. Gordon Trask
County Counsel
648 Hall of Administration
500 West Temple St.
Los Angeles, CA 90012
2. Barrett S. Litt, Esq.
Litt & Stormer
3550 Wilshire Blvd., Ste 1200
Los Angeles, CA 90010
3. Donald C. Randolph, Esq.
Overland, Berke, Wesley, Gits,
Randolph & Levanas
10951 West Pico Blvd., Ste. 300
Los Angeles, CA 90064
4. John G. Peterson, Esq.
Peterson & Brynan
8530 Wilshire Blvd., Ste 407
Beverly Hills, CA 90211

EXHIBIT B

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CERTIFICATE OF SERVICE BY MAIL

I, PILAR LEGASPI, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is United States Attorney, Tax Division, 300 North Los Angeles St., Los Angeles, CA 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action; that I am employed by the United States Attorney for the Central District of California, who is a member of the bar of the United States District Court for the Central District of California, at whose direction the service by mail described in this certificate was made; that on JUN 20 1991, I deposited in the United States mails at 300 North Los Angeles St., Los Angeles, CA, in the above-entitled action, in an envelope bearing the requisite postage, a copy of NOTICE OF MOTION AND MOTION OF THIRD PARTY UNITED STATES OF AMERICA TO EXAMINE AND COPY EXHIBITS 5-K, 5-L, 5-O, 5-P AND 6-O addressed to (see attached Mailing List also)

at their last known address, at which place there is a delivery service by United States mail.

This certificate is executed on JUN 20 1991, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

Pilar Legaspi
PILAR LEGASPI

CERTIFICATE OF SERVICE BY MAIL

- 2 -

cc: Eric M. Lieberman, Esquire
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
740 Broadway, Fifth Floor
New York, New York 10003
(~~By Federal Express~~)

Michael Lee Hertzberg, Esquire
740 Broadway, Fifth Floor
New York, New York 10003
(~~By Federal Express~~)

John J. Quinn, Esquire
David S. Eisen, Esquire
QUINN, KULLY and MORROW
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Earle C. Cooley, Esquire
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Timothy Boles, Esq.
Boles & Moxon
6255 Sunset Blvd., Ste 200
Hollywood, CA 90028

Gerald Armstrong, Esq.
707 Fawn Drive
San Anselmo, CA 94960